Supreme Court, U. S.
FILED
MAR 8 1980
MICHAEL RODAK, JR., CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO: 79-1387

GEORGE WILLIAM MINSON

PETITIONER

V.

CHRYSLER CORPORATION

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO:

GEORGE WILLIAM MINSON

PETITIONER,

V.

CHRYSLER CORPORATION

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

To The Honorable Supreme Court of the United States:

The petition of George William Minson, for a writ of certiorari directed to the United States Circuit Court of Appeals for the Fourth Circuit to bring before the Supreme Court the case of George William Minson, Appellant-Plaintiff, v. Chrysler Corporation, Appellee-Defendant.

REFERENCE TO OPINIONS BELOW

The opinion below in the judgment of affirmance of the United States Court of Appeals for the Fourth Circuit, No. 79-1480, reversal of which judgment is sought by this petition for writ of certiorari, is an unpublished opinion, appended hereto as "Appendix A".

The Memorandum of the United States District Court for the Eastern District of Virginia, Richmond Division, No. 78-0905-R, in the order of dismissal of action which the above opinion and judgment affirmed, and reversal of which order is also sought by this petition, and which petitioner believes to be an unpublished opinion, is appended hereto as "Appendix B."

In the prior case, Minson Plymouth, Inc. v. Chrysler Motors Corporation, in the United States District Court for the Eastern District of Virginia, Richmond Division, No. 73-469-R, (relevant here for the purpose of Petitioner's contention that res judicata did not apply to the subsequent action referred to above), Petitioner believes the opinion in the judgment of dismissal upon the merits is an unpublished opinion. However, Petitioner is unable to append said opinion hereto because he does not now possess a copy of said opinion, and because he could not, in the exercise of due

diligence obtain a copy of same within the time allowed to file this petition.

The opinion of the United States Court of Appeals for the Fourth Circuit in its judgment of affirmance of that prior case, Minson Plymouth, Inc., Appellant v. Chrysler Motors Corporation, Appellee, No. 75-2312, is published at 544 Federal Reporter, 2d Series, pages 1266-1267, and is appended hereto as "Appendix C."

BASIS OF JURISDICTION

The affirming judgment sought to be reviewed was rendered on December 10, 1979 and entered on the same date at a time unknown to Petitioner; and Petitioner files his petition for writ of certiorari within three months.

The jurisdiction of this Court is invoked under Sec. 240 of the Judicial Code, as amended by Act of Congress February 13, 1925, Chapter 229, Stat. 938 (28 U.S.C.A. § 1254 (1).

It is believed that the lower court committed error in its decision on questions of substance involving matters of law.

The following cases sustain the jurisdiction of this Court to issue its writ of certiorari.

Brooklyn Savings Bank v. O'Neil, 324 U.S. 697, 65 S.Ct. 895, 89 L.Ed. 1296 (1945), rehearing denied, 325 U.S. 893, 65 S.Ct. 1189, 89 L.Ed. 2005.

Cafeteria and Restaurant Workers Union, Local 473, AFL-CIO v. McELROY, 367 U.S. 886, 81 S.Ct. 1743. 6 L.Ed.2d 1230, motion denied, 366 U.S. 956, 81 S.CT. 1912, 6 L.Ed.2d 1251, rehearing denied, 368 U.S. 869, 82 S.Ct. 22, 7 L.Ed.2d. (1961).

Carnley v. Cochran, 369 U.S. 506, 82 S.Ct. 884, 8 L.Ed.2d. 70 (1962).

Heflin v. United States, 358 U.S. 415, 79 S.Ct. 451, 3 L.Ed.2d. 407 (1959).

Pennsylvania R.Co. v. O'Rourke, 344 U.S. 334, 13 S.Ct. 302, 97 L.Ed. 367 (1953), rehearing denied, 345 U.S. 913, 73 S.Ct. 638, 97 L.Ed. 1347.

T.I.M.E., Inc. v. United States, 359 U.S. 464, 79 S.Ct. 904, 3 L.Ed.2d. 952 (1959).

United States Seaboard Air Line R. Co., 361 U.S. 78, 80 S.Ct. 12, 4 L.Ed.2d. 25 (1959).

(1) Is a prior decision of a District Court in an action between two parties res judicata on a cause of action and on facts, neither of which were tried therein, but rather excluded by a pre-trial order, in a subsequent action between the same parties, which subsequent action is based solely upon the previously excluded cause of action and facts?

(2) Is a pro se party, who seeks to oppose a motion for summary judgment, denied due process of law by the refusal of the District Court to hold a hearing on the motion, and by that Court's concurrent insistence that the motion be argued solely by briefs?

CONSTITUTIONAL PROVISION INVOLVED

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private

property be taken for public use, without just compensation.

Fifth Amendment to United States Constitution.

STATEMENT OF THE CASE

The instant petition arises from an action against respondent based on breach of contract and common law duties. Nevertheless, the courts below in this action granted summary judgment to the respondent on the grounds that this action had been previously litigated, and a final decision was reached in that litigation. However, that previous litigation, although it involved the same parties, was based on totally different grounds. Moreover, there was no possibility of raising any grounds other than those statutory grounds which were actually raised in the former action, since a pre-trial order limited the scope of that action.

Thus, in the former action in 1973, Petitioner commenced an action in the United States District Court for the Eastern District of Virginia, Richmond Division, against the Respondent, alleging violation of two statutes by the Respondent in dealings between the two as automobile franchisor and dealer. That action did not

concern non-statutory contract claim which dealt with certain automotive parts in Petitioner's possession. The parts were the subject of a subsequent action, from which subsequent action this petition culminates. Nor did that prior action concern any of Respondent's duties to Petitioner, except under the federal and state statutes therein referred to, as the scope of that action was limited by agreement of counsel and by pre-trial order therein. In that prior action, the trial court granted dismissal of the action on motion by Respondent at the close of Petitioner's case at trial. Petitioner thereupon appealed the dismissal; but the United States Court of Appeals for the Fourth Circuit affirmed the dismissal.

In 1978, Petitioner commenced the instant action in the Circuit Court of the City of Hopewell, Virginia, which action was promptly removed to the United States District Court for the Eastern District of Virginia, Richmond Division. Thereupon, Respondent moved for summary judgment on the theory of res judicata. Petitioner, a layman now representing himself, requested oral argument on whether summary judgment was proper; and the Court denied that request, instead demanding that Petitioner file a brief and affidavits on the issue. As a layman, Petitioner was not able to satisfactorily articulate to that Court why the

theory of res judicata did not apply to the subsequent action. Thereupon that Court granted summary judgment to Respondent on the theory of res judicata. Petitioner still representing himself appealed to the United States Court of Appeals for the Fourth Circuit. That Court affirmed the judgment of the lower court. The present Petition for Writ of Certiorari was timely filed following the judgment of affirmance of the United States Court of Appeals for the Fourth Circuit, seeking reversal of that judgment and of the judgment of the District Court below in this action.

The basis for federal jurisdiction of the United States District Court below in this action is founded upon 28 U.S.C.A. § 1441(a).

ARGUMENT FOR ALLOWANCE OF THE WRIT

A. Reasons For the Writ

(1) The Court of Appeals has decided an important question of federal law which has been settled by this Court contrary to the decision of the Court of Appeals.

(2) The Court of Appeals has decided a federal question in a way in conflict with applicable decisions of this Court.

(3) The Court of Appeals has decided a question of local law in a way in conflict with applicable local decisions.

(4) The Court of Appeals has decided an important question of federal law which has not yet been, but should now be, settled by this Court.

B. Amplification of the Above Reasons

(1) The writ sought should be granted, since the judgment of affirmance below was in conflict with decisions of this Court regarding the application of res judicata. Decisions of this Court clearly indicate that that theory does not apply to different causes of actions between the same parties not directed toward identical subject matter. Mercoid Corp. v. Mid-Continental Inv. Co., 320 U.S. 661, (1944). In the present action, Petitioner tried inarticulately as a layman to express causes of action in breach of contract and other common-law duties against Respondent concerning certain automotive parts; whereas the prior action was limited by court order to, and hence was tried solely upon, causes of action concerning purely statutory duties, totally apart from the specific duty to repurchase said automotive parts, which duty and which parts are the subject matter of the present action. Additional reason for the grant of the

writ sought, based upon this error of the Court of Appeals below, is the inconsistency of that Court's decision, sought to be reviewed, with applicable local decisions concerning the application of res judicata.

(2) The writ sought should be granted, since additionally the judgment of affirmance below decided a federal question in a way in conflict with applicable decisions of this Court concerning the United States Constitution, Fifth Amendment prohibition of denial of property without due process. While this Court has apparently not spoken to the precise issue of the important federal question of whether due process requires extending to a layman the right to be heard in person on the propriety of a grant of summary judgment against him; this Court should settle that question. In the present action, Petitioner was denied that right by the District Court, and as a result was not adequately able to articulate, in the frozen format of a brief, his very valid reasons why the former action did not bar the instant action. In the questioning of Petitioner by the Court that would only properly have taken place at such hearing, these reasons would have come to light and prevented summary judgment from being granted on the basis of res judicata. A layman, more than an

experienced counsel, requires such hearing in person in order to be adequately and meaningfully heard. Otherwise, he would be denied due process, in that his course of action would be dismissed (thereby stripping him of his property rights) without access to a meaningful day in court. Boddie v. Connecticut, 401 U.S. 371 (1970). The decision of the Circuit Court of Appeals is in conflict with the following cases:

Aspden v. Nixon, 45 U.S. 467, 4 How. 467, 11 L.Ed. 1059 (1846);

Boddie v. State of Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d. 113 (1970);

Brown v. Felsen, 99 S.Ct. 2205 (1979).

C.I.R. v. Sunnen, 333 U.S. 591, 68 S.Ct. 715, 92 L.Ed. 898 (1948).

Birge-Forbes Co. v. Heye, 251 U.S. 317, 40 S.Ct. 160, 64 L.Ed. 286 (1920);

Hovey v. Elliott, 167 U.S. 409, 418, 17 S.Ct. 841, 42 L.Ed. 215 (1897);

Hughes v. U.S., 71 U.S. 232, 4 Wall 232, 18 L.Ed. 303 (1866);

Larsen v. Northland Transportation Co., 292 U.S. 20, 54 S.Ct. 584, 78 L.Ed. 1096 (1939);

Lawlor v. National Screen Service Corp., 349 U.S. 322, 75 S.Ct. 865, 99 L.Ed. 1122 (1955);

McComb v. Frink, 149 U.S. 629, 13 S.Ct. 993, 37 L.Ed. 876 (1893);

Mercoid Corp. v. Mid-Continent Inv. Co., 320 U.S. 661, 64 S.Ct. 268, 88 L.Ed. 376, reh. denied, 321 U.S. 802, 64 S.Ct. 555, 88 L.Ed. 1089, motion denied, 323 U.S. 672, 65 S.Ct. 77, 89 L.Ed. 546 (1944);

NAACP v. Button, 371 U.S. 415, 9 L.Ed.2d. 405, 83 S.Ct. 328 (1963);

North Carolina R. Co. v. Story, 268 U.S. 288, 45 S.Ct. 531, 69 Ed. 959 (1925);

Radford v. Myers, 231 U.S. 725, 34 S.Ct. 249, 58 L.Ed. 454 (1914);

Sea-Land Services, Inc. v. Gaudet, 414 U.S. 573, 94 S.Ct. 806, 39 L.Ed.2d. 9, reh. denied, 415 U.S. 986, 94 S.Ct. 1582, 39 L.Ed.2d. 883 (1974);

Stark v. Starr, 94 U.S. 477, 24 L.Ed. 276 (1876);

Tait v. Western Md. Ry. Co., 289 U.S. 620, 53 S.Ct. 706, 77 L.Ed. 1405 (1933);

Troxell v. Delaware L&W.R. Co., 227 U.S. 434, 33 S.Ct. 274, 57 L.Ed. 586 (1913);

Yates v. U.S., 354 U.S. 298, 77 S.Ct. 1064, 1 L.Ed.2d. 1356 (1957);

U.S. Int'l Bldg. Co., 345 U.S. 502, 73 S.Ct. 807, 97 L.Ed. 1182, reh. denied, 345 U.S. 978, 73 S.Ct. 1120, 97 L.Ed. 1392 (1953);

Cohen v. Power, 183 Va. 258, 32 S.E.2d 64 (1946);

Kemp v. Miller, 166 Va. 661, 186 S.E. 99 (1937);

Nationwide Mutual Ins. Co. v. Jewel Tea Co., 202 Va. 527, 118 S.E.2d. 646 (1958).

PRAYER

Wherefore, your Petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court directed to the United States Circuit Court of Appeals for the Fourth Circuit, commanding that Court to certify and send to this Court for its review and determination on a day certain therein named a full and complete transcript of the record and proceedings in the case of George William Minson, Appellant-Plaintiff, v. Chrysler Corporation, Appellee-Defendant, No. 79-1480, to the end that this cause may be reviewed and determined by this Court as provided for in the statutes of the United States, and that said decree and judgment of the United States Circuit Court of Appeals for the Fourth Circuit may be reversed by this Honorable Court and that of the District Court reversed, and that your Petitioner may have such other and further relief as to this Honorable Court may seem meet and just.

George William Minson

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

(UNPUBLISHED) APPENDIX A

No. 79-1480

George William Minson, Appellant,

v.

Chrysler Corporation, Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. D. Dortch Warriner, District Judge.

Submitted November 1, 1979 Decided December 10, 1979

Before WINTER, MURNAGHAN and SPROUSE, Circuit Judges.

(George William Minson, Appellant, Pre Se; R. Kenneth Wheeler, Robert M. Rolfe, Stephen T. Gannon and Hunton and Williams on brief for Appellee.)

PER CURIAM:

The district court dismissed plaintiff's suit for money damages in which he alleged that he sued as the last director and trustee in dissolution of Minson Plymouth, Inc. and charged that defendant Chrysler Corporation had breached its contractual obligation to repurchase automotive parts possessed by Minson Plymouth. Dismissal was predicated upon the finding that Minson Plymouth had unsuccessfully asserted the same claim against defendant in prior litigation and that the valid judgment entered therein was res judicata of the present suit. Plaintiff has appealed and defendant has moved for summary affirmance together with an award of just damages and single or double costs to defendant.

From our examination of the briefs, the motion and response thereto and the record extract, we grant the motion for summary affirmance. We are satisfied that the district court was indisputably correct in dismissing the action for the reasons assigned by it. Minson v. Chrysler Corporation, Civil Action No. 78-0905-R (E.D.Va. March 13, 1979). We therefore affirm.

Our authority to award just damages and single or double costs to the appellee when we

determine that an appeal is frivolous is purely discretionary. See Rule 38, F.R.A.P. In the exercise of that discretion, we decline to make such an award in the instant case. Chrysler Corporation, as the prevailing party to this appeal, will, of course, be entitled to its costs as authorized by Rule 39, F.R.A.P.

A F F I R M E D.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

GEORGE WILLIAM MINSON	:	
	:	
	:	
v.	:	CIVIL ACTION
	:	NO: 78-0905-R
	:	
CHRYSLER CORPORATION	:	

M E M O R A N D U M

It appearing to the Court without question that the former judgment in Minson Plymouth, Inc. v. Chrysler Motors Corp., Civil Action No. 73-468-R, is a valid judgment and is final; that the claim asserted in this litigation was asserted in the former litigation above mentioned; that the judgment rendered in the former litigation with respect to the claim asserted in the instant action was a judgment rendered on the merits; and that the parties to the former judgment stand in such a relationship to the present parties as to entitle the present parties to the benefits and subject them to the burdens of the former adjudication.

It follows that this action must be dismissed on defendant's plea of res adjudicata.

An appropriate order shall issue.

(D. Dortch Warriner)
United States District
Judge

Date: (13 March 1979)

MINSON PLYMOUTH, INC., a Virginia
Corporation, Appellant,

v.

CHRYSLER MOTORS CORPORATION,
a Delaware Corporation, Appellee.

No. 75-2312.

United States Court of Appeals,
Fourth Circuit.

Argued March 14, 1977.
Decided March 31, 1977.

The United States District Court for the Eastern District of Virginia, at Richmond, J. Calvitt Clarke, Jr., J., directed verdict in favor of defendant automobile manufacturer, and plaintiff dealer appealled. The Court of Appeals held that since termination was initiated by automobile dealer, manufacturer's decision to discontinue city dealership selling only one make of automobile did not violate Automobile Dealers' Day in Court Act.

Affirmed.

1. Trade Regulation - 871

In absence of coercion, intimidation or threats thereof, there can be no recovery under Automobile Dealers' Day in Court Act. Automobile Dealer's Day in Court Act, §§ 1-5, 15 U.S.C.A. §§ 1221-1225.

2. Trade Regulation - 871

Since termination of automobile dealership was initiated by dealer, which had attempted to effect a "concurrent ermination" of dealership by selling it as going business to buyer who would be approved by manufacturer, manufacturer's decision to discontinue city dealership selling only one make of automobile did not violate Automobile Dealers' Day in Court Act nor Virginia statute, which was conceded to be no broader than the federal Act. Automobile Dealers' Day in Court Act §§ 1-5, 15 U.S.C.A. §§ 1221-1225; Code V. 1950, § 13.1-564.

James F. Pascal, Richmond, Va. (Hirschler, Fleischer, Weinberg, Cox & Allen, Richmond, Va., on brief), for appellant.

R. Kenneth Wheeler, Richmond, Va. (Douglas W. Davis, Hunton & Williams, Richmond, Va., on brief), for appellee.

Before RUSSELL, Circuit Judge, FIELD, Senior Circuit Judge, and HALL, Circuit Judge.

PER CURIAM:

In February of 1971 the plaintiff Minson Plymouth, Inc., commenced business as a Plymouth automobile dealer in Hopewell, Virginia, under a Direct Dealer Agreement with the defendant Chrysler Motors Corporation. The dealership progressed reasonably well until February of 1973 when George Minson, the President and Manager of the plaintiff corporation, was advised by a physician that he had a serious heart condition and should get out of the automobile business. Thereafter, Minson attempted to effect a "concurrent termination" of the dealership by selling it as a going business to a buyer who would be approved by Chrysler. Minson sought to negotiate such a sale, but in June of 1973 was advised by Chrysler that it no longer desired to continue a dealership in Hopewell selling only Plymouth products. Contending that Chrysler's conduct violated the Automobile Dealers' Day in Court Act, 15 U.S.C. §§ 1221-1225 as well as Virginia Code § 13-1-564, Minson instituted this action. At the conclusion of the evidence the district court directed a verdict in favor of Chrysler and Minson has appealed.

/1,2/ It is now well settled that in the absence of coercion, intimidation or threats thereof, there can be no recovery under the

federal statute. Fray Chevrolet Sales, Inc. v. General Motors Corp., 536 F.2d 683 (6 Cir. 1976); Overseas Motors, Inc. v. Import Motors Ltd., 519 F.2d 119 (6 Cir. 1975). Since the termination was initiated by Minson, we agree with the district judge that Chrysler's decision to discontinue a "Plymouth only" dealership in Hopewell was not violative of the day-in-court Act. Counsel for the plaintiff concedes that the scope of the Virginia statuts is no broader than the federal Act and, accordingly, the judgment is affirmed.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

GEORGE WILLIAM MINSON	:	
	:	
	:	
V.	:	CIVIL ACTION
	:	NO: 78-0905-R
	:	
CHRYSLER CORPORATION	:	

O R D E R

The plaintiff may, if he so desires respond to defendant's motion for summary judgment with any matter he wishes to offer in rebuttal within 10 days of this date. Such material should be in the form of affidavits, that is, sworn or signed statements by persons having first-hand knowledge of the facts to which the statement refer. A statement signed under penalty of perjury need not be notarized to qualify as an affidavit. In addition to such material plantiff may file a legal brief supporting his view of the case. Should plaintiff fail to submit any such materials, the Court has the power to enter judgment against plaintiff on the basis of defendant's motion for summary judgment.

Let the Clerk send a copy of this order to plaintiff and counsel for defendant.

(D. Dortch Warriner)
United States District
Judge

Date: (22 February 1979)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

GEORGE WILLIAM MINSON	:	
	:	
V.	:	CIVIL ACTION
	:	NO: 78-0905-R
CHRYSLER CORPORATION	:	

O R D E R

For the reasons set forth in the memorandum this day entered defendant's motion for summary judgment is GRANTED and this action is DISMISSED. Judgment is entered for defendant against the plaintiff with costs.

Should plaintiff desire to appeal, written notice of appeal must be filed with the Clerk of this Court within 30 days of this date.

Let the Clerk send a copy of this order and the accompanying memorandum to the plaintiff and to counsel for defendant.

(D. Dortch Warriner)
United States District
Judge

Date: (13 March 1979)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

MINSON PLYMOUTH INC., :
a Virginia Corporation :
:
vs. : JUDGMENT
:
CHRYSLER MOTOR CORPORATION :
a Delaware Corporation :

This action came on for hearing before the Court, Honorable J. Calvitt Clarke, Jr., United States District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

It is Ordered and Adjudged that the plaintiff Minson Plymouth, Inc., a Virginia corporation take nothing, and the action be dismissed on merits.

Dated at Richmond, Virginia this 11th day of September, 1975.

(W. Farley Powers, Jr.)
Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

IN THE CHAMBERS OF
JUDGE WARRINER

INITIAL PRE-TRIAL ORDER
Entered November 16, 1978

...15. All motions, other than those excepted in Local Rule 11(F), must be accompanied by a brief or memorandum in support thereof. Motions filed without a brief will not be considered and the issues raised therein may be deemed waived. Opposing counsel shall file his brief in opposition to the motion within ten (10) days of the filing of the motion. A rebuttal brief may be filed within three (3) days thereafter. In all other respects counsel shall be guided by the Federal Rules of Civil Procedure and Local Rule 11.

When all briefs have been filed or when the time within which briefs are required to be filed has expired, it is incumbent upon the moving party to confer with opposing counsel to determine if oral argument will be necessary.

In the event oral argument is deemed necessary, it is the further duty of the moving party to confer with opposing counsel with respect to a hearing date and to contact Judge Warriner's secretary to arrange for such a hearing. Upon the assignment of a hearing date, notice shall be filed with the Court and served upon opposing counsel. Motions as to which the Court's immediate attention is required should be called to the attention of the Clerk's Office at the time of the filing thereof.

Counsel are urged to prepare adequate briefs so the Court may properly determine the issue presented without oral argument. A request for oral argument should be made only when the matter cannot adequately be presented on briefs. Counsel may not be heard on oral argument if he has failed to file his brief in accordance with the procedures hereinabove set forth.

Counsel for all parties acknowledge receipt of a copy of this order.

_____
United States District Judge

Date: _____

CERTIFICATE OF SERVICE

This is to certify that I, GEORGE WILLIAM MINSON, mailed three copies of this Petition for Writ of Certiorari to the Law Firm of Chrysler Corp., Hunton & Williams, Post Office Box 1535, Richmond, Virginia 23212 on this 3th day of March, 1980.

George W. Minson

GEORGE W. MINSON
907 Forest View Drive
Colonial Heights,
Virginia 23834

Telphone: (804) 526-2939

Sworn before me this _____ day of _____, 1980.

_____
Notary Public

Supreme Court, U. S.
FILED
APR 8 1980
MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

No. 79-1387

GEORGE WILLIAM MINSON,
Petitioner,

v.

CHRYSLER CORPORATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

R. KENNETH WHEELER
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April 7, 1980

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Supreme Court of the United States

No. 79-1387

GEORGE WILLIAM MINSON,
Petitioner,

v.

CHRYSLER CORPORATION,
Respondent.

BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

I.
PRELIMINARY STATEMENT[1]

This is a case dismissed below pursuant to the doctrine of *res judicata*. The Petition for Writ of Certiorari (the Petition) alleges jurisdiction pursuant to 28 U.S.C. § 1254(1). Yet, the Petition does not accurately set forth any "special and important" reasons for the issuance of the writ, and fails to meet the considerations governing review on certiorari expressed in Rule 19 of Rules of the Supreme Court of the United States.[2] Moreover, despite

[1] Petitioner, George William Minson, will be referred to throughout as "Minson." Respondent, Chrysler Corporation, and its predecessor, Chrysler Motors Corporation, will be referred to throughout as "Chrysler."

References to the Appendix will be indicated by the letter "A" followed by the appropriate page numbers.

All emphasis has been added unless otherwise noted.

[2] Hereinafter Rules of the Supreme Court of the United States will be referred to as "Sup. Ct. R. ——" with the appropriate rule number inserted.

Minson's representations to the contrary, the Petition presents no legal questions not previously resolved or any questions of importance to the general public. The Petition demonstrates no conflict between courts of appeals, no important question of federal law and no departure from the accepted and usual course of judicial proceedings.

Minson attempts to elicit sympathy from this Court because he is a layman appearing *pro se*. Yet, he has never asked for a court-appointed attorney. Moreover, he has filed an affidavit in this litigation representing he has over $200,000.00 in assets. (A. 42-44.) Thus, professional counsel was within his reach. This Petition amounts to nothing more than a continuing expression of discontent over decisions adverse to Minson on four separate occasions. It has no substance in law and, accordingly, should be denied.

II.
QUESTIONS PRESENTED

1. Should this Court grant review of a summary affirmance by a court of appeals of a district court's summary judgment on the basis of *res judicata,* when the claims, operative facts, and parties in interest, were the same in this litigation as an action previously tried?

2. Does a party who has failed to file a brief in response to a motion and failed to request oral argument, as prescribed by the Local Rules and the Initial Pretrial Order, have a right to oral argument in opposition to that motion?

III.
STATEMENT OF THE CASE

Facts

On February 3, 1971, Minson entered into a Direct Dealer Agreement (the Agreement) with Chrysler to sell Plymouth products in Hopewell, Virginia, operating as Minson Plymouth, Inc. (Minson Plymouth).[3] Minson continued as a Plymouth dealer until early 1973 when he was advised by his physician to leave the automobile business because of health problems. Accordingly, Minson took steps to terminate his dealership. Upon Minson's decision, Chrysler decided not to perpetuate a dealership in the area which sold only the Plymouth line of Chrysler automobiles. Further, Minson submitted names of several prospective purchasers of his parts and inventory to Chrysler for approval as a successor dealer, all of whom were unacceptable to it.

As a result, Minson Plymouth, by counsel, filed a complaint in the United States District Court for the Eastern District of Virginia, charging Chrysler with various civil rights violations, antitrust violations, violations of the Automobile Dealer's Day In Court Act and breach of contract. (A. 1-8.) At the trial of that case, on September 10 and 11, 1975, Chrysler's motion for directed verdict at the close of Minson Plymouth's evidence was granted. Thereupon, Minson Plymouth, by counsel, appealed to the United States Court of Appeals for the Fourth Circuit, which affirmed the ruling of the trial court.

In that previous action, Minson Plymouth alleged, among other things, that Chrysler improperly refused to repurchase, allegedly pursuant to its obligation under the Agreement,

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[3] Although Minson individually was not a party to it, the Agreement represented that Minson owned all the voting stock in Minson Plymouth.

certain parts which Minson Plymouth had in its possession. Further, Minson Plymouth presented evidence that Chrysler had refused to assist it in ascertaining the value of its parts inventory. Finally, Minson Plymouth sought damages in the former action for Chrysler's failure to repurchase the dealership's parts.[4] Significantly, in answering an interrogatory in that first case requesting the nature and amount of damages claimed, Minson Plymouth responded in part as follows:

> These are itemized, in part, on the 59-page parts list which has already been delivered to the defendant. In addition, there are substantial attorneys' fees which are not capable of precise determination at this time, and there are storage and related charges that the plaintiff has incurred as a result of the defendant's failure to repurchase parts. . . . (A. 24, 25.)

The present action was instituted by Minson as trustee in dissolution for Minson Plymouth.[5] Here, Minson again charged Chrysler with breach of the Agreement because of Chrysler's refusal to repurchase the parts with which the dealership was left. (A. 9-11.)

Proceedings Below

On September 1, 1978, Minson filed a second action, this time in the Circuit Court of the City of Hopewell, Virginia. This action alleged, among other things, that Chrysler was obligated under the Agreement to repurchase the parts Minson had on hand when his business became inactive and that Minson had requested Chrysler to repurchase the parts at the current wholesale price, but Chrysler had refused. (A.

[4] All these facts were admitted in the present case. (A. 21-26.)

[5] Although the earlier action was filed under the name of Minson Plymouth, Minson has stated that the two cases "involved the same parties." (Petition at 6.) Thus, identity of parties is not an issue.

10.) Minson asked the court to determine the wholesale price of the parts, determine the fair market value for the parts, order Chrysler to assist Minson with an expert to ticket, inventory, package and prepare the parts for return to Chrysler, and order Chrysler to accept return of the parts and pay Minson for their value. (A. 10, 11.) On October 2, 1978, Chrysler timely removed this action to the United States District Court for the Eastern District of Virginia and filed its Answer. (A. 12-20.)

After receiving Minson's responses to requests for admission,[6] Chrysler filed its Motion for Summary Judgment and supporting Memorandum. By copy of its cover letter to the Clerk of the District Court, Chrysler's counsel reminded Minson that pursuant to Local Rule 11 (F) (A. 28), as well as the court's Initial Pretrial Order (A. 29, 37), he had ten days (plus three days for service by mail) within which to file his response to Chrysler's Motion, including a brief. This letter was dated February 7, 1979. (A. 27.) Minson did not respond within thirteen days. On February 22, 1979, the District Court, *sua sponte* granted Minson an additional ten days to respond. (A. 38.) Minson did not do so within this ten-day period. On March 7, 1979, Minson filed a request for extension of time in the District Court, (A. 39, 40), which was denied March 12, 1979. (A. 41.) On March 13, 1979, the court granted Chrysler's Motion for Summary Judgment and dismissed Minson's action pursuant to the doctrine of *res judicata*.

Minson noted his appeal to the United States Court of Appeals for the Fourth Circuit. On the filing of briefs, Chrysler moved for summary affirmance and on December

[6] Minson responded to Chrysler's Request for Admissions by inserting his responses on the same document, in between the individual requests. (A. 22-25.)

10, 1979, the Fourth Circuit granted Chrysler's Motion for Summary Affirmance, stating it was satisfied "the district court was indisputably correct in dismissing the action for the reasons assigned by it."

Minson thereupon filed the petition herein.

IV.

ARGUMENT

1. The Res Judicata Issue Was Decided Correctly Below.

The Petition fails to come to grips with the issue of *res judicata* as decided below.[7] It is well settled that four criteria must be satisfied in order to invoke the doctrine of res judicata: (1) the former judgment must have been valid and final; (2) the cause of action asserted in the subsequent litigation must be the same cause of action as that presented in the former; (3) the former judgment must have been rendered on the merits; and (4) the parties to the former judgment must be identical to or in privity with those in the present suit. *Thomas* v. *Consolidation Coal Co.*[8] Satisfaction of these criteria bars not only issues actually tried,

[7] Subsection 4 of Sup. Ct. R. 23 states:

> The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition.

Minson's Petition fails to meet the requirements of this rule.

In the past, this Court has indicated it will take a liberal view of pleadings proferred by parties who are acting *pro se. Durley* v. *Mayo,* 351 U.S. 277, *reh. denied,* 352 U.S. 859 (1956). However, this liberal view is not without limitation. The infirmity of Minson's Petition is more than a matter of form. The issues addressed in the Petition are not factually corroborated, do not touch upon new matters and have been previously decided by this Court contrary to Minson's position. For this reason alone, the Petition should be denied.

[8] 380 F.2d 69, 79 (4th Cir. 1967), *cert. denied,* 389 U.S. 1004 (1967).

but those which could have been raised in the former action. *Angel* v. *Bullington;*[9] *Pettus* v. *American Airlines, Inc.*[10] The only question raised here by Minson is whether the claims or causes of action asserted in the two cases are identical.

Minson's Bill of Complaint alleged that Chrysler was obligated to "repurchase the parts that Minson had on hand when the business terminated active operation." It further demanded that Chrysler assist in inventorying and preparing the parts for return to Chrysler. (A. 10.) Although these matters are pleaded in different form than in the prior action, they were or could have been litigated there.

Minson's protests to the contrary are belied by his own response to request for admissions. In them Minson admitted:

> (1) In Civil Action No. 73-469-R, Minson Plymouth, Inc., presented evidence to the Court that Chrysler Motors Corporation has refused to assist it in ascertaining the value of its parts inventory and had refused to repurchase its parts inventory from Minson Plymouth, Inc.

(A. 23, 24.)

> (2) In Civil Action No. 73-469-R, Minson Plymouth, Inc., alleged among other things, that Chrysler Motors Corporation refused to repurchase, allegedly pursuant to its obligation under the Agreement, certain parts which Minson Plymouth, Inc., had in its possession.

(A. 22, 23.)

> (3) Part of the damages sought by Minson Plymouth, Inc., in Civil Action No. 73-469-R were attributable to

[9] 330 U.S. 183, 193 (1947).

[10] 587 F.2d 627 (4th Cir. 1978), *cert. denied,* .... U.S. ...., 62 L.Ed.2d 112 (1979).

> the failure of Chrysler Motors Corporation to repurchase from Minson Plymouth, Inc., the parts which are the subject of the Bill of Complaint.

(A. 25.)

At the least, Minson was afforded the opportunity to be heard on these issues in the first action. This is sufficient for the grant of *res judicata*. Among the cases recognizing this principle are those cited in the Petition, *e.g.*, *Hovey* v. *Elliott*.[11]

> If a party has been successful in obtaining a judgment in his favor, he should not ordinarily be subjected to further litigation with respect to matters determined by the judgment; if a party after a full opportunity to be heard has been unsuccessful in obtaining a judgment upon a claim or in defending a claim against him, it is not unfair that he should be deprived of further litigation with respect to matters determined by the judgment. *Thomas* v. *Consolidation Coal Co.*[12] *See Angel* v. *Bullington.*[13]

In sum, present suit involves the same subject matter (Plymouth parts) as the previous action. It is based on the same operative facts (Chrysler's failure to repurchase) as before. And Minson seeks the same basic remedy (a money judgment) as Minson Plymouth had earlier. This is sufficient to warrant denial of the Petition. *Chicot County Drainage District* v. *Baxter State Bank;*[14] *Cromwell* v. *County of Sac.*[15]

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[11] 167 U.S. 409, 418 (1897).

[12] 380 F.2d 69, 77 (4th Cir. 1967), *cert. denied,* 389 U.S. 1004 (1967).

[13] 330 U.S. 183, 193 (1947).

[14] 308 U.S. 371 (1940).

[15] 94 U.S. 351 (1876). *Res judicata* applies to bar absolutely any subsequent claims on the same cause of action. Collateral estoppel, on the other hand, applies to bar only those issues specifically determined in an earlier action when there is later litigation between the same parties on a different cause of action. *Id., Azalea Drive-In Theater* v. *Hanft,* 540 F.2d 713, 715 (4th Cir. 1976). In light of Minson's answers to the requests for admissions, he is now barred from raising these issues again. *Angel* v. *Bullington,* 330 U.S. 180, 192-193 (1947). Accordingly, even if the application of *res judicata* was not appropriate, the Petition should be denied.

2. Oral Argument Of Motions Is Not A Requirement Of Due Process.

For the first time in this protracted litigation, Minson argues in the Petition that he was denied due process in the District Court. He bases this claim on the failure of the District Court to hear oral argument on Chrysler's Motion for Summary Judgment. Both because it lacks merit and because it was not presented below, this argument does not support the issuance of a writ of certiorari.

In his Statement of the Case (Petition at 7), Minson claims he requested oral argument from the district court regarding Chrysler's Motion for Summary Judgment. He then claims the court denied that request, instead demanding that he file a brief or affidavit. However, no such request was ever made. By copy of its letter to the Clerk forwarding its Motion for Summary Judgment (A. 27), Chrysler reminded Minson of the period within which he was required to file his response to Chrysler's Motion. He did not meet this deadline and the Court, *sua sponte,* granted Minson an additional ten days within which to respond. Minson still did not respond within this date nor did he, in either time period, make a request for oral argument. After the second ten-day period had expired, Minson filed a document entitled Motion for Extension of Time to File Brief. (A. 39.) In it, Minson simply moved for an additional extension within which to file his brief. There is no request in this document, nor in any other document filed by him, for oral argument.

Oral argument in a federal court is a privilege and not a right. Indeed, due process does not require that a party in every civil case actually have a hearing on the merits. *Boddie* v. *Connecticut.*[16] In *Federal Communications Commission* v. *WJR,*[17] the FCC denied without oral argument WJR's petition for reconsideration and hearing concerning another radio station's application for a construction permit. The court of appeals reversed and remanded, holding oral argument was an inherent element of due process in any judicial or quasi-judicial determination of questions of law.[18] This Court reversed the court of appeals, stating:

> Certainly the Constitution does not require oral argument in all cases where only insubstantial or frivolous questions of law, or indeed substantial ones, are raised. Equally certainly it has left wide discretion to Congress in creating the procedures to be followed in both administrative and judicial proceedings, as well as in their conjunction.[19]

Similarly, in *Hilton* v. *W. T. Grant Co.,*[20] a motion to dismiss was granted without oral agrument. The court noted the parties had, and utilized, ample opportunity to present their arguments,[21] and thus were accorded due process. Following *WJR,* the court held "oral argument is not required to constitute due process."[22]

The Federal Rules of Civil Procedure and the Rules of this Court strongly support this view. Fed. R. Civ. P. 78

[16] 401 U.S. 371-378 (1971).
[17] 337 U.S. 265 (1949).
[18] *Id.* at 273.
[19] *Id.* at 276.
[20] 212 F.Supp. 126 (W.D. Pa. 1962).
[21] This was true here, but Minson did not take advantage of his opportunity to make a filing.
[22] *Id.* at 128, *see Morrow* v. *Topping,* 437 F.2d 1155, 1156 (9th Cir. 1971).

states in pertinent part: "To expedite its business, the court may make provisions by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition." Moreover, Sup. Ct. R. 35, subsection 3, states in part "Oral argument will not be heard on any motion unless the court specially assigns it therefor."

Minson cites a number of cases in support of his arguments. None are discussed. All are distinguishable from this case. Some, such as *Boddie* v. *Connecticut,*[23] actually support Chrysler's position. Some have no relation to this case at all.[24] Some are perhaps remotely related to this litigation.[25] They do not change the fact that the issues involved here were previously litigated, or change the rule that denial of oral argument does not equal denial of due process.

V.

CONCLUSION

This Court has ruled it will not take jurisdiction over claims which do not present substantial federal questions. *Seaboard Air Line* v. *Padgett;*[26] *Sawyer* v. *Piper.*[27]

> [T]he bare averment of a federal question is not in all cases sufficient. It must not be wholly without foundation. There must be at least color of ground for such

[23] 401 U.S. 371 (1971).
[24] For example, *NAACP* v. *Button,* 371 U.S. 415 (1963), dealt with first and fourteenth amendment protections to the activities of a civil rights organization in making available attorneys for purposes of litigation.
[25] *Cohen* v. *Power,* 183 Va. 258 (1944), stated that a present action for defamation and insulting words was not barred by earlier actions in detinue and for breach of a contract of employment.
[26] 236 U.S. 668 (1915).
[27] 189 U.S. 154 (1903).

> averment, otherwise a federal question might be set up in almost any case, and the jurisdiction of this court invoked simply for the purpose of delay.[28]

The averments of federal questions in the Petition do not meet this standard. Even when a significant question is presented, this Court's power to issue a writ of certiorari is sparingly exercised. It will be used only when the circumstances of the case satisfy the Court that the necessity of avoiding conflicts between the Circuits or the overriding importance of a matter of public interest, demand its exercise. *Forsyth* v. *Hammond*;[29] *Layne & Bowler Corp.* v. *Western Well Works, Inc.*[30] The Petition raises no question of overriding public importance. It points to no conflicts between the Circuits or between the Circuits and the courts of a state. Minson simply disagrees with how the law was applied in his case.

Minson had his day in court in the first action. He was then assisted by able counsel, and by his own admission, raised and litigated the issues concerning his parts. Merely because he was disappointed in the first action he should not be permitted continually to vex Chrysler with litigation concerning the same subject matter, the same issues, and the same complaints.

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[28] *Id.* at 157. (*quoting with approval New Orleans* v. *New Orleans Water Works,* 142 U.S. 79, 87 (1891).)

[29] 166 U.S. 506, 514-515 (1897).

[30] 261 U.S. 387, 393 (1923).

For all the foregoing reasons, the Petition should be denied.

Respectfully submitted,

CHRYSLER CORPORATION

By: R. KENNETH WHEELER
Of Counsel

R. KENNETH WHEELER
ROBERT M. ROLFE
STEPHEN T. GANNON
Hunton & Williams
P. O. Box 1535
Richmond, Virginia 23212
Counsel for Respondent

April 7, 1980

CERTIFICATE OF SERVICE

I certify that in compliance with Rule 33, paragraph 1, of Rules of the Supreme Court of the United States, three copies of the foregoing Brief In Opposition To Petition For Writ of Certiorari were mailed to George William Minson, 907 Forest View Drive, Colonial Heights, Virginia 23834, and 10500 Rockville Pike, Rockville, Maryland 20852, this 7th day of April, 1980.

R. KENNETH WHEELER

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action

No. 73-469-R

MINSON PLYMOUTH, INC.
a Virginia Corporation

Plaintiff,

v.

CHRYSLER MOTORS CORPORATION
a Delaware Corporation

Defendant.

Serve: Edward R. Parker, Registered Agent
5511 Staples Mill Road
Richmond, Virginia 23228

Filed Sep. 17, 1973 by Clerk, U.S. Dist. Court, Richmond, Va.

COMPLAINT

I. JURISDICTION, VENUE AND PARTIES

1. The jurisdiction of this court is invoked on the basis of diversity of citizenship and amount and pursuant to Section 4 of the Clayton Act (15 USC § 15) to recover damages which plaintiff has suffered by reason of defendant's violations, as hereinafter described, of Sections 1 and 2 of the Sherman Act (15 USC §§ 1 and 2) and the Clayton Act (15 USC § 14).

2. Defendant, Chrysler Motors Corporation, a Delaware

Corporation, (hereinafter sometimes referred to as "Chrysler") is qualified to do business, transacts business and maintains a registered office in this District.

3. Plaintiff, a Virginia Corporation having its principal place of business in this District, has been engaged in the business of operating a Plymouth automobile dealership in Hopewell, Virginia since February, 1971 under the tradename "Minson Plymouth" pursuant to a "Direct Dealer Agreement" (herein called "Dealer Agreement") between plaintiff and defendant dated February 3, 1971, a copy of which is filed herewith as Exhibit A.

II. FACTUAL BACKGROUND

4. When the Dealer Agreement was entered into between plaintiff and defendant in connection with the purchase by plaintiff of the Plymouth dealership from a prior dealer, defendant represented to plaintiff that, should plaintiff decide not to continue with the venture, the dealership could be transferred. In reliance upon this representation, and the other prior representations and warranties of defendant, and on the basis of the executed Dealer Agreement, plaintiff expended great sums of money in establishing its Plymouth dealership and building and promoting its business as a Plymouth dealer in Hopewell, Virginia.

5. In February, 1972 plaintiff decided to liquidate its Plymouth dealership in Hopewell, Virginia, including all of its inventory and other fixed assets, pursuant to the terms of the Dealer Agreement.

6. Plaintiff contacted defendant and communicated its desire to liquidate its dealership and sell its assets. At that time defendant urged plaintiff not to liquidate, but to sell its dealership, including all of its inventory and other fixed assets and an assignment of its rights under the Dealer

Agreement authorizing the conduct of a Plymouth dealership in Hopewell, Virginia, as a going business, and represented to plaintiff that there would be no problem in transferring the Plymouth dealership to a qualified purchaser. In reliance on this and other prior representations of the defendant, plaintiff entered into negotiations with prospective purchasers concerning the transfer of the dealership.

III. CIVIL RIGHTS VIOLATION

7. Plaintiff realleges and repleads the allegations of paragraphs 1 through 6 of this complaint.

8. Based upon the representations, warranties and assurances of defendant, plaintiff entered into negotiations with Connie Hack American, Inc., through its president, Mr. B. C. Hack, and with Mr. Franklin Perry for the purpose of consumating the sale of plaintiff's Plymouth dealership. The negotiations with Mr. Perry led to a basic agreement on the terms of a sale to him of the dealership.

9. Upon review of information submitted by plaintiff concerning Mr. Perry's qualifications, defendant, though its duly authorized representatives, informed plaintiff that it appeared that Mr. Perry was well qualified and that the dealership could easily be transferred to him upon completion of the necessary papers, and a form of application for transfer of the dealership to Mr. Perry was delivered to plaintiff by defendant.

10. Subsequently, upon learning that Mr. Perry was a Negro, Chrysler advised plaintiff that Mr. Perry was not acceptable, despite having previously indicated to plaintiff that his background and financial condition were completely acceptable, and refused to transfer plaintiff's dealership to Mr. Perry solely because of his race in violation of Mr. Perry's civil rights.

11. After Chrysler's refusal to further consider a transfer of plaintiff's dealership to Mr. Perry, plaintiff, with the encouragement and assistance of Chrysler, pursued its negotiations with Connie Hack American, Inc. As a result of these negotiations, Connie Hack American, Inc. proposed to purchase the dealership in a letter to plaintiff, a copy of which is filed herewith as Exhibit B.

12. In order to disguise its unlawful discrimination again Mr. Perry, defendant advised plaintiff that defendant would not permit a transfer of plaintiff's Plymouth dealership to anyone except Randolph Motors, Inc., the Chrysler-Dodge dealer for the Hopewell, Virginia area.

13. Until plaintiff was advised on June 5, 1973 that defendant would not permit the transfer of plaintiff's dealership, defendant had theretofore always indicated that the dealership was transferable and that there would be no problem with respect thereto. Furthermore, defendant specifically stated that Mr. Perry was an acceptable purchaser.

14. As a result of defendant's racial discrimination and its combination and conspiracy to lessen competition among its dealers as hereinafter set forth, defendant refused to transfer plaintiff's dealership, thereby preventing plaintiff from selling its dealership as a going concern. Plaintiff has thus lost the benefits of its agreements with Mr. Perry and Connie Hack American, Inc. and has been forced to engage in piecemeal liquidation of its assets at a substantial loss.

IV. ANTITRUST VIOLATION

15. Plaintiff realleges and repleads the allegations of paragraphs 1 through 14 of this complaint.

16. In 1959, defendant entered into a letter agreement with Randolph Motors, Inc., a Virginia corporation operating a Chrysler-Dodge dealership in the Hopewell, Virginia area, stating that defendant would not permit the transfer of plaintiff's Plymouth dealership to anyone without first offering the dealership to Randolph Motors, Inc. for a nominal consideration. In response to complaints from Randolph Motors, Inc. at the time the dealership was transferred to plaintiff that defendant in so doing had violated its aforesaid agreement, defendant reaffirmed same and gave Randolph Motors, Inc. assurances that it would adhere to the agreement in the future. These agreements between defendant and Randolph Motors, Inc. constitute an unlawful combination and conspiracy in unreasonable restraint of interstate trade and commerce and an unlawful combination and conspiracy to monopolize and lessen competition in interstate trade and commerce.

17. Defendant entered into the agreements described in paragraph 16 and has refused and continues to refuse to permit the transfer of plaintiff's Plymouth dealership in furtherance of an unlawful combination and conspiracy with Randolph Motors, Inc. in order to effectively allocate territoy and customers among its dealers in violation of Sections 1 and 2 of the Sherman Act and in violation of the Clayton Act.

18. Defendant has attempted to monopolize and has monopolized interstate trade and commerce in the manufacture, distribution and sale of automobiles in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" as amended, 26 Stat. 209, 15 USC §§ 1 and 2, commonly known as the Sherman Act and in violation of the Clayton Act (15 USC § 14). The substance of said violations are that:

a. defendant has wrongfully refused to permit its dealers to transfer a dealership to an independent dealer;

b. defendant has entered into unlawful agreements restricting the transfer of dealerships except to another dealer in the immediate geographic area in order to allocate territory and customers;

c. defendant has terminated its dealership with dealers for the purpose of maintaining a monopoly in the sale of automobiles and preventing competition among its dealers and between authorized dealers and independent dealers;

d. defendant has used coercion, in addition to dealer termination and refusal to transfer dealerships to others, in furtherance of the acts alleged in paragraph 17, including threats of termination, refusals to deal with dealers, withholding repayments for warranty work, restrictive quotas, coercive credit restrictions through Chrysler Credit Corporation.

V. BREACH OF CONTRACT, FRANCHISE LAW AND DEALER'S DAY IN COURT ACT VIOLATIONS

19. Plaintiff realleges and repleads the allegations of paragraphs 1 through 18 of this complaint.

20. Defendant has caused considerable delay in the delivery of cars pursuant to orders given by the plaintiff and has wholly failed to deliver cars ordered by plaintiff; has coerced plaintiff into accepting the delivery of unwanted cars in order to obtain other models; has used its warranty program in order to coerce the purchase of special parts programs.

21. Defendant has engaged in discriminatory delivery of automobiles in that defendant has refused to allot to plaintiff popular selling models and has loaded it with larger unsaleable and/or less popular and undesirable models, thereby weakening plaintiff's economic and competitive position and forcing it to liquidate its business by

piecemeal sales and in furtherance of defendant's purpose and agreement to have plaintiff transfer its dealership at nominal cost to Randolph Motors, Inc. pursuant to its unlawful combination and conspiracy with Randolph Motors, Inc. The foregoing acts of defendant constitute a breach of defendant's Dealer Agreement with plaintiff and a pattern of coercion and intimidation showing a lack of good faith in violation of the Virginia Franchise Law (Va. Code §§ 13.1-557 *et. seq.*), the federal Automobile Dealers' Day in Court Act, § 1-5 (15 USCA §§ 1221-1225) and the federal antitrust laws. Defendant's purpose in its course of conduct was and is to coerce plaintiff to accept unwanted cars, to forego valid warranty claims and ultimately to force defendant to relinquish its Plymouth dealership to Randolph Motors, Inc.

22. As a direct and proximate result of the aforesaid acts of defendant, plaintiff has been injured and damaged in its business and property in the amount of One Hundred Twenty-Five Thousand and No/100 Dollars ($125,000.00).

WHEREFORE, plaintiff prays that this court adjudge, order and decree as follows:

a. that defendant has combined and conspired to restrain and monopolize interstate trade and commerce in the manufacture, distribution and sale of automobiles and has monopolized and attempted to monopolize such trade and commerce as hereinbefore alleged in violation of Sections 1and 2 of the Sherman Act;

b. that judgment be entered in favor of plaintiff for the injury and damage caused to plaintiff in the amount of Three Hundred Seventy-Five Thousand and No/100 Dollars ($375,000.00) pursuant to and on the basis provided for in Section 4 of the Clayton Act (15 USC § 15);

c. that defendant be required to pay the full cost of this suit, including as a part thereof a reasonable fee for the services of plaintiff's attorney and that plaintiff be given judgment against defendant for breach of contract, misrepresentation and fraud, and violation of defendant's Dealer Agreement with plaintiff and its wrongful refusal to transfer plaintiff's dealership;

d. that defendant's course of conduct constitutes a pattern of intimidation and coercion and lack of good faith in dealing with plaintiff in violation of state and federal automobile dealer and franchise statutes;

e. that defendant has discriminated against Franklin Perry in violation of his civil rights, which discrimination has caused plaintiff substantial damage.

MINSON PLYMOUTH, INC.

By /s/ GEORGE W. MINSON
President

/s/ LARRY H. SPILLMAN, p.q.
WALLER R. STAPLES, III
LARRY H. SPILLMAN
Cohen, Abeloff & Staples
1128 Ross Building
Richmond, Virginia 23219

VIRGINIA:
IN THE CIRCUIT COURT OF THE CITY OF HOPEWELL

GEORGE WILLIAM MINSON,
Plaintiff,

vs

CHRYSLER CORPORATION,
Defendant.

Registered Agent
Edward R. Parker
5511 Staples Mill Road
Henrico County, Virginia

BILL OF COMPLAINT

To the Honorable Judges of the Court:

Your Plaintiff, George William Minson, files this action as the Director and Trustee of Minson Plymouth Incorporated, a dissolved Virginia Corporation. Your Plaintiff says as follows:

1. Minson Plymouth Incorporated (Minson) is a dissolved Virginia Corporation; George William Minson is the last Director and, under authority of Section 13.1-91 of the *Code of Virginia,* 1950, as Amended, is a Trustee in dissolution and is authorized to bring this action in behalf of the Corporation.

2. Chrysler Motors Corporation merged into Chrysler Corporation December 31, 1975; the successor, Chrysler Corporation (Chrysler) is a foreign corporation licensed to do business in Virginia.

3. Minson Plymouth Incorporated operated a Plymouth dealership in Hopewell, Virginia from February 1971 until September 1973 under a Plymouth Direct Dealer Agreement

(Agreement) between Chrysler Motors Corporation and Minson Plymouth Incorporated. The dealership has not been operated since September 1973.

4. Minson had on hand a large number of parts for Plymouth automobiles when the business terminated; said parts had been purchased from Chrysler Motors Corporation.

5. Chrysler is obligated, under the Agreement, to repurchase the parts that Minson had on hand when the business terminated active operation if Minson so desired.

6. Minson has repeatedly requested that Chrysler repurchase said parts at the current wholesale price, but Chrysler has refused.

7. Minson had attempted to sell said parts to other Plymouth dealers, but has been unable to do so.

8. Minson does not know the current wholesale price of the parts that are on hand.

9. Some of the parts that are on hand are not currently listed in Chrysler's price book, but are substantially identical to parts that are listed in Chrysler's price book.

WHEREFORE, you Plaintiff, who lacks an adequate remedy at law, requests this Honorable Court:

1. Construe Paragraph 21 of the Agreement as to price, terms, etc., of the parts to be returned.

2. Determine the current wholesale price of all parts that Minson has on hand.

3. Determine the current fair market value of all parts on hand that are not listed in Chrysler's wholesale price book.

4. Order Chrysler to assist Minson with an expert parts employee to ticket, inventory, package and prepare the parts for return to Chrysler.

5. Order Chrysler to accept return of the parts and pay

Minson for the value, as determined by the Court, or, in the alternative, to enter judgment in favor of Minson, against Chrysler, for the value of the parts.

6. Charge Chrysler with the costs of this proceeding.

7. Grant Minson such further relief, both special and general, as may seem just and necessary.

GEORGE W. MINSON
907 Forest View Drive
Colonial Heights, Va. 23834

Filed in the Clerk's Office the 1st day of September, 1978.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. . . . . .

GEORGE WILLIAM MINSON,

Plaintiff,

v.

CHRYSLER CORPORATION,

Defendant.

PETITION FOR REMOVAL

Chrysler Corporation (Chrysler), by counsel, petitions this Court for removal of an action instituted in the Circuit Court of the City of Hopewell, Virginia, styled *George William Minson* v. *Chrysler Corporation,* and in support thereof states:

(1) On or about September 1, 1978, plaintiff filed a Bill of Complaint against Chrysler in the Circuit Court of the City of Hopewell, Virginia. On September 25, 1978, Chrysler served an Answer, Demurrer and Plea of Res Judicata and Collateral Estoppel to the Bill of Complaint in the Circuit Court of the City of Hopewell. Copies of the Bill of Complaint, Answer, Demurrer and Plea and attached hereto as Exhibits A and B, respectively.

(2) When plaintiff's action was initiated, Chrysler was, and currently is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in the state of Michigan. Upon information and belief, at the time this action was initiated, plaintiff was, and currently is, a citizen of the Commonwealth of Virginia.

(3) To the best of Chrysler's knowledge and belief, the amount in controversy in this action, exclusive of interest

and cost, exceeds the sum of Ten Thousand Dollars ($10,000.00). This belief is based on testimony from a previous lawsuit in this Court styled *Minson Plymouth* v. *Chrysler Motors Corporation,* Civil Action No. 73-469-R. A copy of this testimony is attached hereto as Exhibit C.

(4) The state action involves a controversy wholly between citizens of different states and is a civil action of which the United States District Court has original jurisdiction.

(5) The state court action is now pending within the geographical jurisdiction of this Court.

(6) Chrysler presents herewith a bond with good and sufficient surety conditioned to pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or that it was improperly removed.

(7) Copies of all pleadings served upon Chrysler or filed by the parties in the state court action are attached and by reference made a part of this Petition.

WHEREFORE, Chrysler prays this Court to assume jurisdiction of this action, to approve the bond tendered, and to make all such further orders as may be required to properly determine this controversy.

CHRYSLER CORPORATION

By: H. J. PRIDMORE
Assistant Secretary

R. KENNETH WHEELER
ROBERT M. ROLFE
STEPHEN T. GANNON
Hunton & Williams
P. O. Box 1535
Richmond, Virginia 23212
Counsel

STATE OF MICHIGAN }
COUNTY OF WAYNE } To-wit

This day personally appeared before me, *Sandra L. Yates* ....., a Notary Public, in and for the jurisdiction aforesaid, H. J. Pridmore a representative of Chrysler Corporation whose title is Assistant Secy. and made oath that he is duly authorized to sign and verify this Petition for Removal, that he is familiar with the facts set forth in this Petition, and that the facts therein are true to the best of his knowledge and belief.

Given under my hand this 25th day of September, 1978.

My commission expires:

Notary Public
SANDRA L. YATES
Notary Public, Wayne County, Mich.
My Commission Expires March 10, 1980

CERTIFICATE OF SERVICE

I hereby certify that on the .... day of ....., 1978, I mailed a copy of the foregoing PETITION FOR REMOVAL to George William Minson, 907 Forest View Drive, Colonial Heights, Virginia 23834, plaintiff in this action.

STEPHEN T. GANNON

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. .....

GEORGE WILLIAM MINSON,
Plaintiff,

v.

CHRYSLER CORPORATION,
Defendant.

NOTICE OF REMOVAL

TO: George William Minson
907 Forest View Drive
Colonial Heights, Virginia 23834

Plaintiff

You are hereby notified that on October 2, 1978, Chrysler Corporation, by counsel, caused to be filed in the United States District Court for the Eastern District of Virginia, Richmond Division, a Petition for Removal of the above-styled case from the Circuit Court of the City of Hopewell, Virginia to the United States District Court for the Eastern District of Virginia, Richmond Division, together with an appropriate removal bond. A copy of the Petition for Removal has been filed with the Clerk of the Circuit Court of the City of Hopewell, and such case was thereby removed from the Circuit Court of the City of Hopewell to the United States District Court for the Eastern District of Virginia, Richmond Division.

Dated the 2nd day of October, 1978.

CHRYSLER CORPORATION

By: .....
Of Counsel

R. KENNETH WHEELER
ROBERT M. ROLFE
STEPHEN T. GANNON
Hunton & Williams
Post Office Box 1535
Richmond, Virginia 23212

Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the .. day of October, 1978, I mailed a copy of the foregoing NOTICE OF REMOVAL to George William Minson, 907 Forest View Drive, Colonial Heights, Virginia 23834.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

Civil Action No. . . . . .

GEORGE WILLIAM MINSON,

Plaintiff,

v.

CHRYSLER CORPORATION,

Defendant.

ANSWER OF CHRYSLER CORPORATION

Chrysler Corporation (Chrysler), by counsel, for its answer to the Bill of Complaint filed by George William Minson (Minson), as Director and Trustee of Minson Plymouth Incorporated (Minson Plymouth), in the Circuit Court of the City of Hopewell, Virginia, says as follows:

FIRST DEFENSE

The Bill of Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

(1) Chrysler is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Bill of Complaint and, accordingly, denies the same.

(2) Chrysler admits the allegations contained in paragraph 2 of the Bill of Complaint.

(3) Chrysler admits the allegation contained in para-

graph 3 of the Bill of Complaint that Minson Plymouth operated a Plymouth dealership in Hopewell, Virginia from February, 1971 under a Plymouth Direct Dealer Agreement (the Agreement) between Chrysler and Minson Plymouth; however, Chrysler is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 3 of the Bill of Complaint that Minson Plymouth has not operated a Plymouth dealership since September, 1973, and, accordingly, denies the same.

(4) Chrysler is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Bill of Complaint, and, accordingly, denies the same.

(5) Chrysler denies the allegations contained in paragraph 5 of the Bill of Complaint and, answering further, says that neither Minson nor Minson Plymouth has terminated the Agreement in accordance with the terms of that agreement.

(6) Chrysler admits the allegation contained in paragraph 6 of the Bill of Complaint that Minson requested that Chrysler repurchase certain parts from Minson Plymouth and that Chrysler has refused to purchase certain parts; however, Chrysler says it does not know what parts Minson or Minson Plymouth wished it to purchase and, answering further, Chrysler denies that it has any obligation to purchase any parts from Minson or Minson Plymouth.

(7) Chrysler is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7, 8 and 9 of the Bill of Complaint, and, accordingly, denies the same.

(8) Chrysler denies that Minson or Minson Plymouth is entitled to any relief as requested in the Bill of Complaint.

(9) Chrysler denies that it is indebted to Minson or Minson Plymouth in any manner or in any amount.

AFFIRMATIVE DEFENSES

(10) Chrysler says that because of the action previously litigated in this Court styled *Minson Plymouth* v. *Chrysler Motors Corporation,* Civil Action No. 73-469-R, which action resulted in a judgment in favor of Chrysler Motors Corporation, Minson and Minson Plymouth are barred by the doctrines of res judicata and collateral estoppel from asserting all causes of action set forth in the Bill of Complaint.

(11) Chrysler says that Minson and Minson Plymouth have waived all claims asserted in the Bill of Complaint.

(12) Chrysler says that all causes of action asserted in the Bill of Complaint are barred by the applicable statutes of limitations or by periods of limitation agreed upon in the Agreement.

(13) Chrysler says that Minson and Minson Plymouth are estopped to assert all matters set forth in the Bill of Complaint.

(14) Chrysler says that Minson and Minson Plymouth are barred by the doctrine of laches from asserting all causes of action set forth in the Bill of Complaint.

CHRYSLER CORPORATION

By .....
Of Counsel

R. KENNETH WHEELER
ROBERT M. ROLFE
STEPHEN T. GANNON
Hunton & Williams
Post Office Box 1535
Richmond, Virginia 23212
Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the .... day of October, 1978, I mailed a copy of the foregoing ANSWER OF CHRYSLER CORPORATION to George William Minson, 907 Forest View Drive, Colonial Heights, Virginia 23834.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

Civil Action No. 78-0905-R

GEORGE WILLIAM MINSON,

Plaintiff,

v.

CHRYSLER CORPORATION,

Defendant.

REQUEST FOR ADMISSIONS

TO: Mr. George William Minson
907 Forest View Drive
Colonial Heights, Virginia 23834

Chrysler Corporation (Chrysler), by counsel, pursuant to Rule 36 of the Federal Rules of Civil Procedure, requests that plaintiff George William Minson admit, within thirty days after service thereof, the truth of the following relevant matters of fact.

GUIDELINES

In accordance with Rule 36 of the Federal Rules of Civil Procedure, please observe the following guidelines:

(a) Set forth in detail the reasons why any matter of fact is not admitted.

(b) If good faith requires that a particular request be qualified or that only part of the matter requested be denied, specify so much of the request as is true and qualify or deny only the remainder.

(c) Do not give lack of information or knowledge as a reason for failure to admit or deny any request unless you state that you have made a reasonable inquiry and that the information known or readily obtainable by you is insufficient to enable you to admit or deny the matter.

(d) Do not deny any matter of which an admission is requested on the ground that the matter presents a genuine issue for trial.

REQUESTS

(1) The Plymouth Direct Dealer Agreement (the Agreement) to which Minson refers in the Bill of Complaint is a contract between Chrysler and Minson Plymouth, Inc.

Answer—(1) Yes to best of my knowledge.

(2) Minson, individually, is not a party to the Agreement.

Answer—(2) No.

(3) Any cause of action arising out of the Agreement belongs to Minson Plymouth, Inc., and not Minson.

Answer—(3) No.

(4) On September 17, 1973, Minson Plymouth, Inc. filed a Complaint in the United States District Court for the Eastern District of Virginia, Richmond Division, against Chrysler Motors Corporation alleging various causes of action arising out of the dealings between Minson Plymouth, Inc. and Chrysler.

Answer—(4) Yes.

(5) The style of the action to which the preceding Request for Admissions refers was *Minson Plymouth* v. *Chrysler Motors Corporation,* Civil Action No. 73-469-R.

Answer—(5) Yes.

(6) In Civil Action No. 73-469-R, Minson Plymouth, Inc. alleged, among other things, that Chrysler Motors

Corporation refused to repurchase, allegedly pursuant to its obligation under the Agreement, certain parts which Minson Plymouth, Inc. had in its possession.

Answer—(6) Yes in part.

(7) Judgment for Chrysler Motors Corporation was entered in Civil Action No. 73-469-R by the United States District Court for the Eastern District of Virginia, Richmond Division, on September 11, 1975 and was affirmed by the United States Court of Appeals for the Fourth Circuit on March 31, 1977.

Answer—(7) I am not sure of date or parties.

(8) The copy of Judgment attached hereto as Exhibit A is an accurate copy of the judgment entered in Civil Action No. 73-469-R.

Answer—(8) It appears to be.

(9) The Agreement pursuant to which Minson brings this cause of action is the same agreement pursuant to which Minson Plymouth, Inc. brought Civil Action No. 73-469-R.

Answer—(9) No.

(10) At the time Minson Plymouth, Inc. initiated Civil Action No. 73-469-R, in September, 1973, it had ceased active operations and has not actively operated since that date.

Answer—(10) Yes, only as to the sale of automobiles.

(11) Among the claims of Minson Plymouth, Inc. in Civil Action No. 73-469-R was that Chrysler Motors Corporation had treated Minson Plymouth, Inc. unfairly because Chrysler Motors Corporation had refused to repurchase Minson Plymouth, Inc.'s parts inventory pursuant to paragraph 21 of the Agreement.

Answer—(11) Yes in part only.

(12) In Civil Action No. 73-469-R, Minson Plymouth, Inc. presented evidence to the Court that Chrysler Motors

Corporation had refused to assist it in ascertaining the value of its parts inventory and had refused to repurchase its parts inventory from Minson Plymouth, Inc.

Answer—(12) Yes in part only.

(13) After hearing that evidence, the United States District Court for the Eastern District of Virginia, Richmond Division, found, in part, as follows:

> Now, insofar as the parts controversy is concerned, the contract is clear as to how you get your money out of your parts and Mr. Gray has testified that you just —you take your parts inventory and you match it up, and if there's anybody in this room that ought to know how much he could get out of a return of his parts to Chrysler Motors Company, it is Mr. Minson himself. He is the one that has the control of the inventory. He is the one that knows what parts or what boxes have been changed or have been marked so that there would be a service charge on that portion of the inventory or a refusal to accept that portion of the inventory when it got to Plymouth or when it got to the home office of Chrysler.

Answer—(13) I don't understand the question—If, "is this the courts finding" I say partly.

(4) In Civil Action No. 73-469-R, Minson Plymouth, Inc. was asked the following interrogatory:

> Itemize in detail the nature and amount of all damages, whether direct, incidental or consequential, plaintiff claims it has sustained as a result of the actions on Chrysler Motors alleged in the Complaint.

Answer—(14) At todays parts & prices about $30,-000.00.

(15) To the interrogatory described in the preceding Request for Admission, Minson Plymouth, Inc. responded as follows:

> These are itemized, in part, on the 59 page parts list which has already been delivered to the defendant. In addition, there are substantial attorneys' fees which are not capable of precise determination at this time, and there are storage and related charges that the plaintiff has incurred as a result of the defendant's failure to repurchase parts. All documents pertaining to storage charges are available for inspection in accordance with the response to interrogatory No. 6. To date, the plaintiff has not been able to itemize or detail all of said charges, but it will provide the defendant with this information when it is available.

Answer—(15) A parts inventory was submitted to Chrysler Inc.

(16) Part of the damages sought by Minson Plymouth, Inc. in Civil Action No. 73-469-R were attributable to the failure of Chrysler Motors Corporation to repurchase from Minson Plymouth, Inc. the parts which are the subject of the Bill of Complaint.

Answer—(16) Partly true & in addition interference with sales.

(17) Neither Minson nor Minson Plymouth, Inc. has terminated the Agreement in accordance with the provisions of the Agreement.

Answer—(17) I was told it was terminated & facts seem to support this.

(18) The copy of the Agreement attached hereto as Exhibit B is a true and accurate copy of the Agreement to which the Bill of Complaint refers.

Answer—(18) It appears to me. (sic)

CHRYSLER CORPORATION

By /s/ R. KENNETH WHEELER
Of Counsel

GEORGE MINSON
12700 Lake Avenue
Lakewood, Ohio 44107

CERTIFICATE OF SERVICE

This is to certify that a corrected copy of these questions and answers made by me to them was mailed to R. Kenneth Wheeler, Attorney at 707 East Main Street, Richmond, Virginia 23121 this 11th day of January, 1079. (sic)

GEORGE MINSON

February 7, 1979

Mr. W. Farley Powers, Clerk
United States District Court for the Eastern
District of Virginia
U. S. Courthouse Building
Tenth and Main Streets
Richmond, Virginia 23219

George William Minson v. Chrysler Corporation
In the United States District Court for the
Eastern District of Virginia,
Richmond Division
Civil Action No. 78-0905-R

Dear Mr. Powers:

Enclosed please find two copies of Motion for Summary Judgment and accompanying Memorandum in Support of Motion for Summary Judgment. I will appreciate your filing one copy of each and presenting the other copies to Judge Warriner for his consideration.

Since Mr. Minson is proceeding *pro se* in this action, this letter will remind him that pursuant to Local Rule 11(F), as well as the Court's Initial Pre-Trial Order, he has ten days within which to file his response to the enclosed motion, including a brief. Mr. Minson may add three days to his period for responding because these papers are being served on him by mail.

Thank you for your assistance in this matter.

Sincerely yours,

ROBERT M. ROLFE

177/643
Enclosures
cc: Mr. George William Minson

Local Rule 11 (F) Of The United States District Court For The Eastern District Of Virginia.

(F) *Briefs Required.* All motions, unless otherwise directed by the Court, except motions for (1) a more definite statement, (2) an extension of time to respond, unless the time has already expired, (3) production of documents, (4) compelling answers to interrogatories, (5) default judgment, (6) objections to interrogatories, and (7) motions relating solely to processes of discovery, shall be accompanied by a written brief setting forth a concise statement of the facts and supporting reasons, along with a citation of the authorities upon which the movant relies. The opposing party shall file his response, including a like brief and such supporting documents as are then available, within ten days thereafter. For good cause, the responding party may be given additional time or may be required to file his response, brief and supporting documents within such shorter period of time as the Court may specify.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

In the Chambers of Judge Warriner

Civil Action No. . . . . .

GEORGE WILLIAM MINSON,

Plaintiff,

v.

CHRYSLER CORPORATION

Defendant.

INITIAL PRE-TRIAL ORDER

Nonjury Case

1. Trial of this case shall commence at May 7, 10:00 a.m. on , and shall be completed on same day.

2. All discovery proceedings shall be completed on or before March 31, 1979.

3. A status conference shall be held in the Judge's Chambers at .m., on . This conference must be attended by counsel who are familiar with the case and who have full authority with respect thereto. In any case which is filed as a class action, a motion for class certification pursuant to Fed. R. Civ. P. 23(c) shall be filed by the plaintiff within days after the entry of this Order.

4. A Final Pre-trial Conference shall be held in the Judge's Chambers at 10:00 a.m., on April 13, 1979. This conference must be attended by counsel who will be chief trial counsel for each party.

5. Counsel shall, at least 7 days prior to the meeting required by Paragraph 7 below, deliver to opposing counsel a list and description of exhibits to be introduced at the trial. At the same time the exhibits themselves shall be made available for opposing counsel's inspection if he so desires. Exhibit numbers shall have been attached to all exhibits at the time the list is prepared and each exhibit should be referred to in the list by its exhibit number.

At least three days before the meeting required by Paragraph 7, below, opposing counsel shall deliver to counsel a list showing those proposed exhibits as to which opposing counsel has no objection and those as to which he has objection, noting the nature of the objection.

At the meeting required by Paragraph 7, below, all exhibits, or copies thereof, shall be furnished opposing counsel, and all objections shall, if possible, be resolved so as to allow the admission of the proposed exhibits for all or for limited purposes. After such resolution, lists shall be prepared as addenda to the pre-trial order showing by exhibit number and brief description, all exhibits each party proposes as to which no objection is made and all exhibits as to which objection is made with the nature and extent of the objection.

Failure to so list an exhibit required by this order to be listed will result in non-admissibility at trial except for good cause shown.

6. The trial will be expedited if, in addition to the formal list of exhibits, copies of the exhibits are made for opposing counsel and a bench book of exhibits is prepared and delivered to the Court at the start of the trial.

7. Counsel for all parties in the case are directed to confer in person (face-to-face) at the earliest practicable time prior to the Final Pre-trial Conference. Such meetings shall,

in no case, be later than ten (10) days prior to the Final Pre-trial Conference. It shall be the duty of counsel for plaintiff to arrange this conference.

(a) At this conference, counsel for all parties shall furnish all other counsel copies of all exhibits it expects to offer in evidence at the trial. (See 5, above.)

(b) Each counsel shall furnish all other counsel a statement setting forth all facts which counsel believes to be uncontested and which he is willing to stipulate. The proposed stipulations shall be attached as addenda to the pre-trial order.

8. Settlement possibilities shall be discussed. If there is even a remote possibility of settlement, counsel are urged to discuss it with each other thoroughly before undertaking the preparation of the proposed pre-trial order. However, the possibility, even the probability, of settlement shall not be grounds for delay or omission in the preparation for the Final Pre-trial Conference.

9. If the conference between counsel shall disclose any pending motions, counsel for plaintiffs shall, immediately after the conference between counsel, advise the Court by a letter calling attention to such motions as may be pending. If none are pending the letter shall so state.

10. Counsel may, if they believe it helpful, jointly prepare and tender to the Court at the Final Pre-trial Conference a sketch for a pre-trial order, titled "Order in Pre-trial Conference" in substantially the following form:

> "A Final Pre-trial Conference was held on the ..... day of ....., 19..
>
> Appearing for the parties as counsel were: (List the counsel who will attend the Final Pre-trial Conference.)
>
> A. *Uncontested Exhibits:* The admissibility of the following exhibits is uncontested: (List all exhibits, by

number only, which will be admitted without objection.)

B. *The Contested Exhibits:* The admissibility of the following exhibits into evidence is contested: (List in columns all exhibits, by number only, which are contested, together with sufficient space for the Court to make notations of its rulings.)

C. *Uncontroverted Facts:* The parties have agreed that the following may be accepted as established facts for purposes of this case only: (State in detail all uncontroverted facts, including those which are to be stipulated. This portion of the order should be derived from a comparison of and a synthesis from 7(b), above.)

D. *Controverted and Unresolved Issues:* The principle issue or issues remaining to be determined and unresolved matters for the Court's attention are: (Set out such issue or issues which the parties agree are genuinely controverted and which constitute the principle matter or matters in dispute between the parties. In other words, what is the case about?)

E. *Witnesses:*

a) All witnesses to be called by the plaintiff(s) to testify are: (List names of all persons who will testify in person only. These witnesses must be present at trial.)

b) Additional witnesses plaintiff(s) may call to testify are: (List names of all persons who may be called but who the party does not bind himself to call.)

c) All witnesses to be called by the defendant(s) to testify are: (List names of all persons who will testify in person only. These witnesses must be present at trial.)

d) Additional witnesses defendant(s) may call to testify are: (List names of all persons who may be

called but who the party does not bind himself to call.)

(If there are other parties, a similar list is to be made for each.)

It is understood that, except for good cause shown, no witness whose name and address does not appear herein, shall be permitted to testify over objection.

F. *Expert Witnesses' Qualifications:* Experts to be called and their qualifications are: (Set out the qualifications of each person expected to be called as an expert witness for his oral affirmance of its accuracy at the beginning of his testimony.)

G. *Depositions and Other Discovery Documents:*

a) All depositions, answers to written interrogatories, and requests for admissions, or portions thereof, which are expected to be offered in evidence by the plaintiff are: (In columns designate portions of depositions by page and line number; in columns designate answers to interrogatories and requests for admissions by answer or request number.)

b) All depositions, answers to written interrogatories, and requests for admissions, or portions thereof, which are expected to be offered in evidence by the defendant are: (Designate in the manner set out in G(a) above.)

c) Any depositions, answers to written interrogatories, and requests for admissions expected to be offered at trial by either party for the sole purpose of impeachment need not be designated as required above.

(Note: Each item designated In G(a) and (b) shall be immediately followed by the respective objection thereto, if any, together with sufficient space for the Court to make notations of its rulings. The Court will

rule, if possible, on the objections at the pre-trial conference. If counsel deem it advisable these lists may be derived by means of the process set forth in paragraph 5, above.)

(If there are other parties, a designation should be made by each and the objections by adverse patries listed. All irrelevant and redundant matter and all colloquy between counsel at the deposition must be eliminated when the deposition is read, unless ruled relevant.)

H. *Settlement:* Possibility of settlement of this case was thoroughly explored by counsel.

I. *Controling Nature of Order:* This pre-trial order will control the course of the trial and may not be amended except by consent of the parties and the Court or by order of the Court to prevent manifest injustice."

11. The sketch for an order will be signed by all counsel, signifying their acceptance of and concurrence in the order and upon approval by the Court, with such additions or modifications as are necessary, will be signed by the Court as an order reflecting the Final Pre-trial Conference. No objections to the decisions or rulings of the Court are thereby waived by counsel.

12. Proposed findings of fact and conclusions of law will be required in this case in accordance with the following requirements.

Plaintiff shall first serve and file his proposals no later than ten (10) working days prior to trial. Defendant shall then serve and file his proposals three (3) working days before trial.

Plaintiff's proposals shall include first, a narrative statement of all facts proposed to be proved, and second, concise statements of the plaintiff's legal contentions and the authorities supporting them.

The narrative statement of facts shall set forth in simple, declarative sentences all of the facts relied upon in support of the plaintiff's claim for relief. The narrative statement of facts shall be complete in itself and shall contain no recitation of what any witness testified to, or what any defendant stated or admitted in these or other proceedings, and no incorporation by reference to the pleadings or other documents or schedules as such. It may contain references in parentheses to the names of witnesses, depositions, pleadings, exhibits or other documents but no party shall be required to admit or deny the accuracy of such references. The narrative statement of facts shall be so constructed that each of the opposite parties will be able to admit or deny each separate sentence of the statement. Each separate sentence of the statement shall be separately and consecutively numbered.

In the separate section of the proposals containing the proposed conclusions of law, all legal contentions of each plaintiff, necessary to demonstrate the liability of each defendant to such plaintiff, shall be separately, clearly, and concisely stated in separately numbered paragraphs. Each paragraph shall be followed by citations of authorities in support thereof.

Defendants shall file pre-trial proposals containing factual statements admitting or denying each separate sentence contained in the narrative statement of fact of each plaintiff, except in instances where a portion of a sentence can be admitted and a portion denied. In those instances, each defendant shall state clearly the portion admitted and the portion denied. Each separate sentence of each defendant's response shall bear the same number as the corresponding sentence in the plaintiff's narrative statement of fact. In a separate portion of each defendant's narrative statement

of fact, such defendant shall set forth in a separate narrative statement all affirmative matters of a factual nature relied upon it. The defendant's narrative statement of affirmative factual matter shall be contained in a narrative statement of facts constructed in the same manner as the plaintiff's narrative statement of facts.

Defendant shall file, in a separate part of its proposals, a statement of its proposed conclusions of law, which shall directly respond to plaintiff's separate legal contentions and contain such additional contentions of the defendant necessary to demonstrate the non-liability or limited liability of the defendant, or both. The statement of legal contentions of each defendant shall be constructed in the same manner provided for the similar statement of each plaintiff.

13. With respect to discovery proceedings, answers to interrogatories shall be couched in complete sentences or, in the alternative, each question shall be set forth immediately prior to the answer thereto. The purpose of this directive is to make the answer intelligible in and of itself without requiring the reader constantly to refer back and forth between question and answer.

The requirement of paragraph 4 that discovery proceedings be completed on or before the stated date means that discovery is terminated as of that date. Accordingly, all notices and the like must be served a sufficient number of days before that date to accommodate the specified discovery procedure within the time specified in the rules. No discovery shall take place after the discovery cut-off date without leave of Court. Such leave will not ordinarily be granted.

15. All motions, other than those excepted in Local Rule 11(F), must be accompanied by a brief or memorandum in support thereof. Motions filed without a brief will not be considered and the issues raised therein may be deemed

waived. Opposing counsel shall file his brief in opposition to the motion within ten (10) days of the filing of the motion. A rebuttal brief may be filed within three (3) days thereafter. In all other respects counsel shall be guided by the Federal Rules of Civil Procedure and Local Rule 11.

When all briefs have been filed or when the time within which briefs are required to be filed has expired, it is incumbent upon the moving party to confer with opposing counsel to determine if oral argument will be necessary. In the event oral argument is deemed necessary, it is the further duty of the moving party to confer with opposing counsel with respect to a hearing date and to contact Judge Warriner's secretary to arrange for such a hearing. Upon the assignment of a hearing date, notice shall be filed with the Court and served upon opposing counsel. Motions as to which the Court's immediate attention is required should be called to the attention of the Clerk's Office at the time of the filing thereof.

Counsel are urged to prepare adequate briefs so the Court may properly determine the issue presented without oral argument. A request for oral argument should be made only when the matter cannot adequately be presented on briefs. Counsel may not be heard on oral argument if he has failed to file his brief in accordance with the procedures hereinabove set forth.

Counsel for all parties acknowledge receipt of a copy of this order.

United States District Judge

Date: November 16, 1978

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

Civil Action No. 78-0905-R

GEORGE WILLIAM MINSON,

Plaintiff,

v.

CHRYSLER CORPORATION,

Defendant.

Feb. 22, 1979 Clerk, U. S. Dist. Court, Richmond, Va.

ORDER

The plaintiff may, if he so desires respond to defendant's motion for summary judgment with any matter he wishes to offer in rebuttal within 10 days of this date. Such material should be in the form of affidavits, that is, sworn or signed statements by persons having first-hand knowledge of the facts to which the statements refer. A statement signed under penalty of perjury need not be notarized to qualify as an affidavit. In addition to such material plaintiff may file a legal brief supporting his view of the case. Should plaintiff fail to submit any such materials, the Court has the power to enter judgment against plaintiff on the basis of defendant's motion for summary judgment.

Let the Clerk send a copy of this order to plaintiff and counsel for defendant.

D. DORTCH WARRINER
United States District Judge

February 22, 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

Civil Action No. 78-0905-R

GEORGE WILLIAM MINSON,

Plaintiff,

v.

CHRYSLER CORPORATION,

Defendant.

Motion for extension of time to file brief.

George William Minson respectfully requests this court for an order extending an order of the court dated February 22, 1979 that provided him with ten days to file a legal brief supporting his view of the case.

The reason for said request is that the said order described above although mailed to his home, Colonial Heights, was not received by him until March 5, 1979, because my employment has kept me away from home for the last six weeks.

Respectfully submitted,

GEORGE WILLIAM MINSON

Statement in support of argument.

I fully believe that to be denied a chance to discuss the problems in the case at a pretrial conference that was set by this court for April 13, 1979, would be denying me the process that I will be entitled to if I had sufficient funds to

spend with attorneys again. Given the additional time of another ten days, I would be able to prepare a statement as suggested in the court's order.

GEORGE WILLIAM MINSON
Sales Office
12900 Lake Avenue
Lakewood, Ohio 44107

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of March, 1979, I mailed a copy of the request for an extension to Robert Rolfe, P. O. Box 1535, Richmond, Virginia 23212.

GEORGE WILLIAM MINSON

cc: United States District Court
Eastern District of Virginia

Hunton and Williams Attorneys at Law

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 78-0905-R

GEORGE WILLIAM MINSON,
Plaintiff,

v.

CHRYSLER CORPORATION,
Defendant.

Filed Mar. 18, 1979 by Clerk, U. S. Dist. Court, Richmond, Va.

ORDER

It being clear that at the time of the filing of defendant's motion for summary judgment plaintiff, proceeding *pro se,* was notified by counsel for defendant of the requirements of Local Rule 11(F) and that the Court, unaware that such notice had been given, by order of 22 February 1979 specifically granted 10 days from the date of entry for response, and that plaintiff, nevertheless, has failed to file a response to the motion for summary judgment within the 10 days required by Local Rule 11(F) or within the 10 additional days granted by the Court's order of 22 February, plaintiff's request for an extension of time filed herein on 7 March 1979 is DENIED.

Let the Clerk send a copy of this order to the plaintiff and counsel for defendant.

D. DORTCH WARRINER
United States District Judge

Date: 12 March 1979

FINANCIAL AFFIDAVIT

Civil Action No. 78-0905-R

GEORGE W. MINSON

Plaintiff,

vs.

CHRYSLER CORP.

Defendant.

Received April 9, 1979 by Clerk, U. S. District Court, Richmond, Va.

ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY

EMPLOYMENT:

Are you now employed? Yes.

Name & address of employer? Home Marketing of America, 12900 Lake Ave., Lakewood, Ohio 44100.

If yes, how much do you earn per month? $2,400.00.

If no, give month & year of last employment.

How much did you earn per month? $

If married, is your Spouse employed? No

If yes, how much does your Spouse earn per month? NA.

If a minor, what is your parents approx. monthly income? NA.

OTHER INCOME:

Have you recd. within the past 12 months any income from a business, profession or other form of self-employment, or in rent payments, interest, dividends, retirement or annuity payments, or other sources? Yes

If yes, give the amount received & identify the sources.

$600.00 per mo. received from rent from Bolling Place 225, 1471 Lafayette Dr. Col., Ohio 375.

$380.00 per mo. on 1611 Lafayette Dr., vacant as of April 12, 1979.

CASH:

Have you any cash on hand or money in savings or checking account? Yes: $1000.00 Checking and $15,000.00 Savings.

PROPERTY:

Do you own any real estate, stocks, bonds, notes, automobiles, boats, or other valuable property (excluding ordinary furnishings & clothing)? Yes.

If yes, give value and describe it:

Home, Home, two Condo. in Col. Ohio and several junk cars I am driving; value $200,000.00.

DEPENDENTS:

Married, 5 dependents.

List persons you actually support & your relationship to them: George W. Minson, II, Student at Charleston, S.C., son; John H. Minson, son; Mark A. Minson, student at Hargrave Military, son.

DEBTS & MONTHLY BILLS:

List all creditors, including banks, loan companies, charge accounts, etc.:

Home, 907 Forest Lawn Dr., Col. Hghts—$6,000.00, monthly payment $296.00.

Home, 648 Bolling Place, Col. Hghts.—$20,000.00, monthly payment $225.00.

Condo., 1471 Lafayette Dr., Col. Ohio—$35,000.00 monthly payment $365.00.

Condo., 1611 Lafayette Dr., Col., Ohio—$35,000.00, monthly payment $345.00.

Schools, tuition room and board—$6,000.00, monthly payment $500.00.

I certify the above to be correct.

GEORGE W. MINSON
Petitioner